Opinion No. 79-825—May 14, 1980

SUBJECT: LICENSE TO PRACTICE CHIROPRACTIC—A license to practice chiropractic does not authorize the licensee to assist in the birth of a child by natural childbirthing methods.

Requested by: BOARD OF CHIROPRACTIC EXAMINERS

Opinion by: GEORGE DEUKMEJIAN, Attorney General
Jack R. Winkler, Assistant
Edmund E. White, Deputy

The Board of Chiropractic Examiners requests an opinion on a question that we have phrased as follows:

Does a license to practice chiropractic authorize the licensee to assist in the birth of a child by natural childbirthing methods for a fee?

CONCLUSION

A license to practice chiropractic does not authorize the licensee to assist in the birth of a child by natural childbirthing methods.

ANALYSIS

Section 7 of the Chiropractic Act of California provides:

> "One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated 'License to practice chiropractic,' which license shall authorize the holder thereof to practice chiropractic in the State of California as taught in chiropractic schools or colleges; and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, nor the use of any drug or medicine now or hereafter included in materia medica."

As originally presented, the question read:

Does a chiropractor who is present and assists in the birth of a child by natural childbirthing methods for a fee violate section 7 of the Chiropractic Act of California? This form of the question required some interpretation. We

believe the legal question upon which our advice was sought is whether the conduct so described is authorized by a license to practice chiropractic, not which, if any, statute is violated thereby. We revised the question accordingly.

First we must determine what the phrases "assists in the birth of a child" and "natural childbirthing methods" mean as those phrases are used in the question so that we have an accurate factual basis for the analysis. We will then review the applicable statutory and decisional law to determine whether assisting in the birth of a child by natural childbirthing methods is authorized by the license to practice chiropractic.

By indicating that the licensed chiropractor assists in the birth we understand the question to be limited to those events which occur during and immediately before and after childbirth while the chiropractor would be present with the mother as distinguished from any prenatal or postnatal care which might be afforded on other occasions.

The question further narrows our inquiry by its limitation of the kind of assistance provided by the chiropractor to those measures which are "natural childbirthing methods."

Webster's Third New International Dictionary defines "natural childbirth" as a system of management of parturition in which prenatal reeducation and psychologic conditioning largely replace the use of anesthesia, sedation, or surgical intervention in the course of normal childbirth. The same work defines "parturition" as the action or process of giving birth to offspring.

The Board of Chiropractic Examiners in its request for this opinion states that the chiropractic management of childbirth adheres to the following definition:

> "Childbirth is a normal physiologic process. Natural childbirth involves the delivery of the human infant according to procedures that adhere to the design of the entire physiological process of pregnancy and the mechanism of human reproduction. It recognizes the normality of most mothers and focuses on the active conscious participation and awareness of the mother of the natural process of labor. It involves the preparation of mind and body to the natural experience of childbirth by antenatal education. It is preventive in that it emphasizes the importance of physical fitness, exercise, relaxation, breathing, nutrition, and any and all natural methods conducive to the well-being of the mother and for the protection, nourishment, and growth of the baby during the antenatal, intranatal, and postnatal periods of gestation. It is an unmedicated process without drugs or surgical intervention. It is an integrative process in the sense that it encourages a family-oriented environment and provides a fulfilling and shared experience for mother, father and child."

Williams Obstetrics, Fifteenth Edition by Jack A. Pritchard and Paul C. MacDonald, a textbook used in courses on obstetrics in many medical schools, on page 323 states:

> "PHYSIOLOGIC CHILDBIRTH. To eliminate the harmful influence of fear in labor, a school of thought has developed emphasizing the advantages of 'natural childbirth' or 'physiologic childbirth.' Natural or physiologic childbirth entails antepartum education designed to eliminate fear; exercises to promote relaxation, muscle control, and breathing; and adroit management throughout labor with a nurse or physician skilled in reassurance of the patient constantly in attendance.
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> "Most proponents of physiologic childbirth have never claimed that labor can be made devoid of pain or that delivery should be conducted without anesthetic aids. With natural childbirth, most patients experience some pain, and analgesics and anesthetics are not withheld when they are indicated."

There appears to be general agreement in these definitions that "natural childbirth" refers to the management of childbirth by education and reassurance of the mother to reduce her fear and anxiety and exercises to promote relaxation, muscle control and breathing to facilitate delivery and minimize pain with minimal or no use of drugs or surgical intervention.

While these definitions explain the objectives of natural childbirth they provide little information regarding the particular methods or procedures utilized to accomplish these objectives. Since we are called upon to determine whether these methods are authorized by a license to practice chiropractic, it is important that we understand what methods are utilized.

Fortunately we have been provided with a 26 page brief by the California Chiropractic Association. On page 14 of that brief the Association states:

> "Both licensed midwives and drugless practitioners engage in only 'natural' methods during the birthing process, and no medical or surgical interventions are employed. Similarly, a licensed chiropractor would only attend cases of normal childbirth, and would at no time administer drugs or medication, or surgically penetrate the tissues, except the severing of the umbilical cord, and therefore would not be invading the fields of medicine or surgery."

As we read the Association's brief the methods which licensed midwives and drugless practitioners are authorized to use[1] in childbirth are "natural" methods

[1] Section 2350 of the Business and Professions Code provides:

"§ 2350. Midwifery defined; practice authorized

"The certificate to practice midwifery authorizes the holder to attend cases of normal childbirth.

"As used in this chapter, the practice of midwifery constitutes the furthering or

and would constitute the "natural childbirthing methods" referred to in the question submitted.

There appears to be some disagreement in this matter within the field of chiropractic practitioners in California. In response to our invitation for comment on the question presented, R. L. Kuxhaus, D.C.Ph.C., Member of the Legal and Legislative Committee of the International Chiropractors Association of California stated:

> "Natural childbirth happens every day, in the back seat of a taxi cab or on the seat of an airplane, ad infinitum. We do, however, feel that natural childbirth is the way all children should be born, all things being normal and that the art of mid-wifery should receive further and more serious consideration, however, because one holds a license to practice Chiropractic, should in no way give him further rights than anyone else who might qualify themselves in this field. We feel that stretching the practice of Chiropractic beyond the correction of subluxations of the spine for the correction of the cause of disease, which was the original purpose of licensing a Chiropractor would create more problems in the mind of the Public as to what the role the Chiropractor plays in matters of health, we therefore oppose the Board's attempt at authorizing a Chiropractor to practice the art of natural childbirth, which we feel the Courts would ultimately rule as being the practice of obstetrics."

In Williams Obstetrics, *supra*, (at p. 371) the methods are described as follows:

> "Psychologic Methods of Pain Relief. Variable interest in psychological methods of pain relief in labor has been maintained over the

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undertaking by any person to assist a woman in normal childbirth. But it does not include the use of any instrument at any childbirth, except such instrument as is necessary in severing the umbilical cord, nor does it include the assisting of childbirth by any artificial, forcible, or mechanical means, nor the performance of any version, nor the removal of adherent placenta, nor the administering, prescribing, advising, or employing, either before or after any childbirth, of any drug, other than a disinfectant or cathartic.

"A midwife is not authorized to practice medicine and surgery by the provisions of this chapter."

Sections 2353 through 2359 of the same code describe situations in which the certificate to practice midwifery may be revoked if the midwife fails to call "a person authorized to practice a system, including the practice of obstetrics" under the present or any preceding medical practice act.

Section 2528 of the Business and Professions Code provides:

"§ 2528. Practice authorized by drugless practitioner's certificate

"The drugless practitioner's certificate authorizes the holder to treat diseases, injuries, deformities, or other physical or mental conditions without the use of drugs or what are known as medical preparations and without in any manner severing or penetrating any of the tissues of human beings except the severing of the umbilical cord."

Chapter 233, Statutes of 1949, abolished the classification of drugless practitioner but provided that all those who previously held licenses as drugless practitioners could continue their practice and renew their license. (See Bus. & Prof. Code, § 2528.2 (formerly § 2232).)

past two decades. Factual information is not easily elicited from the vast number of publications, many quite unscientific and far from dispassionate. Spiegel (1963), a psychiatrist, and Gross, and Posner (1963) have attempted to approach the subject in logical perspective. According to Gross, all the psychologic methods have as their common goal the elevation of the threshold of pain through physical and mental relaxation. These methods fall into five groups: (1) the Read method of 'natural childbirth' (Buxton, 1962); (2) the psychoprophylactic method, based on the conditioning principles of Pavlov and advocated by Nicolaev (1961) in Russia; (3) the autogenic training of Schultz (1959) in Germany; (4) Lamaze's 'l'accouchement sans douleur' (1957) in Belgium and France; and (5) hypnothic training by Kroger (1962) and others in the United States.

"Pregnant women, especially those in labor with the accompanying anxiety, fear, and pain, represent uniquely circumscribed experiments of nature, particularly responsive to suggestive technics that alter the state of awareness. Most good obstetricians recognize this phenomenon intuitively, and each in his own way supports and conditions his patients to meet the situation. Such psychologic therapy by any other name is equally effective, and the widely varying technics of its application make little difference in the final result. In ordinary circumstances, about 60 percent of women can go through labor with psychologic assistance and a minimum of painrelieving drugs in a manner satisfactory to both them and their obstetricians. In the course of training, many of the psychologic methods contribute to the education for motherhood, a clearly desirable objective.

"As Spiegel points out, it is doubtful that hypnosis or any other psychologic method is harmful to normal pregnant women in good mental health. For the emotionally abnormal woman, pregnancy and childbirth themselves are often traumatic. The psychiatrically unskilled or imperceptive obstetrician, whether employing psychologic methods of pain relief or analgesic drugs, is more than likely to compound the trauma. The crucial point is that pregnancy presents a unique situation in which the obstetrician and psychiatrist can work together to expand vastly, by both clinical and experimental methods, the present state of knowledge of psychic relief of stress."

Our analysis of section 7 of the Chiropractic Act will carefully review its language, examine its legislative history and then review the cases which interpret its provisions. We begin the analysis by dividing section 7 into six parts with lettered designations for each part as indicated in brackets as follows:

"§ 7. [a] One form of certificate shall be issued by the board of chiropractic examiners, which said certificate shall be designated

> 'License to practice chiropractic,' [b] which license shall authorize the holder thereof to practice chiropractic in the State of California [c] as taught in chiropractic schools or colleges; [d] and, also, to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body, [e] but shall not authorize the practice of medicine, surgery, osteopathy, dentistry or optometry, [f] nor the use of any drug or medicine now or hereafter included in materia medica."

For convenience in reference, these parts of section 7 will be referred to by the bracketed letters following § 7, e.g., § 7b, § 7e, etc.

The wording of section 7 is not a model of clarity. Its terms are not defined and the syntax leaves much to be desired. It is not surprising that questions still arise 57 years after its enactment. The one clear part is § 7a: the board may issue only one form of certificate and it is called a "License to practice chiropractic." Most of the controversy has centered around § 7b. While it is clear that the licensee may "practice chiropractic," those words are not defined in the act and have been the subject of much litigation. Section 7c qualifies the meaning of § 7b in some way but it is not clear just how. The words "as taught in chiropractic schools or colleges" could serve to define the practice of chiropractic or they may limit the practice to those matters which are both chiropractic and taught in those institutions. The connection between § 7d and what precedes it is not clear. Does it also qualify § 7b in some way or does it confer authority to do something in addition to the practice of chiropractic? Section 7e and § 7f clearly are limitations on the authority granted by the license but are they limitations on just those matters authorized in § 7d or do they limit § 7b as well?

Fortunately, we do not write on a clean slate. Many of the questions raised by the wording of section 7 have been resolved by the legislative history of the Chiropractic Act and by court decisions interpreting its provisions.

The Chiropractic Act is an initiative measure approved by the people at the general election in November, 1922.[2] At that time the Medical Practice Act regulated the practice of all systems or modes of healing and prohibited such practice without a certificate issued by the Board of Medical Examiners. That board issued four types of certificates, namely, the "physician and surgeon's certificate," the "drugless practitioner's certificate," the certificate to practice chiropody and the certificate to practice midwifery. There was no certificate to practice chiropractic prior to 1922 though chiropractic practice came within the scope of the drugless practitioner's certificate. (*People* v. *Fowler* (1938) 32 Cal. App. 2d (Supp.) 737, 744.)

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[2] The Chiropractic Act has been amended on several occasions but none of these amendments have changed sections 7 or 18 of the Act or made any change which would affect the discussion of those sections in this opinion.

The argument to the voters in favor of the Chiropractic Act[3] indicated that the principal concern of the proponents was the unfair administration of the Medical Practice Act against chiropractors by the Board of Medical Examiners. No objection was made to the terms of the Medical Practice Act, or the scope of practice permitted to drugless practitioners, and the voters were assured by the argument that the proposed Chiropractic Act "prohibits the use of drugs, surgery or the practice of obstetrics by chiropractors." (*People* v. *Fowler*, *supra*, 32 Cal. App. 2d (Supp.) at pp. 744-745.) This argument to the voters has been considered as an aid in the interpretation of the Chiropractic Act by the courts. (*People* v. *Fowler*, *supra*; *Crees* v. *Board of Medical Examiners* (1963) 213 Cal. App. 2d 195, 211.) That an argument to the voters may properly be considered as an aid to the interpretation of ballot measures has recently been reaffirmed by our Supreme Court. In upholding the constitutionality of article XIIIA of the

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[3] "ARGUMENT IN FAVOR OF PROPOSED CHIROPRACTIC ACT.

"Your vote 'Yes' on the Chiropractic Initiative Bill is urged for many reasons, some of which are set forth herein, and all of which are consistent with American ideals, just to all and do injury to none.

"Under this bill there will be a board of five competent chiropractors, appointed by the Governor, to examine and license chiropractors. No chiropractor will be licensed without examination. The board will be self-sustaining, incurring no additional expense to the taxpayers. It provides for high and proper standards of chiropractic education, a high school diploma or its equivalent, requires four hundred hours more than drugless section of present Medical Act, conforms to all general health laws administered by the board of health and prohibits the use of drugs, surgery or the practice of obstetrics by chiropractors, thus guaranteeing to the people competency of chiropractors and protection from the ignorant or unscrupulous, which the medical law, administered by medical men, does not and can not do.

"The teachings and practice of chiropractic are admittedly different from those of medicine, therefore, the members of the Medical Board, who are without training in the science of chiropractic, have never studied it, do not practice it, brand it as unscientific and absurd, are its competitors and desire only to destroy it, can not intelligently and without prejudice examine the chiropractor in his system of practice.

"To illustrate: It would be as reasonable to permit the Mikado to direct our shipbuilding and examine U. S. Naval officers as to permit the Medical Board, dominated by M.D.'s, to examine and control their chief competitors.

"The progress of chiropractic, little short of marvelous, has been made under extremely unfavorable conditions. Denied ordinary freedom from oppression by political medicine, having no hospital facilities, no endowments of their schools or other institutions, no support of society except the commercial side resulting from the good they have done, they have reached the point where within the last seven years twenty-two states have enacted laws similar to the one now proposed in California.

"The Medical Board, empowered, as it now is, to exercise unlimited authority over the practice of chiropractic, is using the medical law to throttle chiropractic and prohibit its practice in California.

"The medical law, as administered by the Medical Board, has no reasonable tendency to promote the public safety and welfare.

"The people of California demand that anyone who proposes to serve them in matters of health shall possess proper qualifications: therefore the demand for a board of chiropractic examiners to examine chiropractors and intelligently consider their qualifications. In this way only may the will and best interests of the people of California be served.

"The following facts should be remembered:

"The only opposition to this bill is by political doctors.

"No chiropractic examinations were ever held in California.

"No chiropractic licenses were ever issued in California.

"No chiropractic licenses CAN be issued under present law.

"In view of the foregoing, and in the interests of right and justice, vote 'Yes.'

"G. A. LYNCH."

California Constitution (The Jarvis-Gann property tax limitation measure) the court stated: "When, as here, the enactment follows voter approval, the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language." (*Amador Valley School District* v. *State Board of Equalization* (1978) 22 Cal. 3d 208, 245-246.)

Since the argument to the voters in favor of the Chiropractic Act stated that the act prohibited the practice of obstetrics we must examine what that statement meant. The words of the act must be understood according to the sense in which they were understood at the time the statute was enacted. (*People* v. *Fowler, supra,* 32 Cal. App. 2d (Supp.) at p. 746; *People* v. *Augusto* (1961) 193 Cal. App. 2d 253, 257.) "Obstetrics" was defined in Webster's New International Dictionary (published in 1909) as the "[s]cience of midwifery; art of assisting women in parturition; the management of pregnancy and labor." The same definition is contained in the Second Edition of the same work published in 1934. In Williams Obstetrics, *supra,* the work commences with the following paragraph:

> "Obstetrics* is the branch of medicine that deals with parturition, its antecedents, and its sequels. It is concerned principally, therefore, with the phenomena and management of pregnancy, labor, and the puerperium, in both normal and abnormal circumstances."

The footnote indicates the definition was taken from the Oxford English Dictionary published in 1933.

We have previously noted how the Board of Chiropractic Examiners defines the chiropractic management of childbirth. (*Supra,* at pp. 2, 3.) It would appear that the chiropractic management of childbirth and obstetrics cover the same field, namely the management of pregnancy, labor, childbirth and its sequels.

In our review of the appellate court decisions, we noted the early opinion of our Supreme Court in *People* v. *LaBarre* (1924) 193 Cal. 388 which held that the Chiropractic Act is *in pari materia* with the Medical Practice Act and all other general health laws. Accordingly they are to be construed as forming a unitary system and as one statute regardless of when each was enacted. This means they are to be read together and harmonized whenever possible.

We previously noted that in 1922 when the Chiropractic Act was enacted, the Medical Practice Act purported to regulate the practice of *all* systems or modes of healing and prohibited such practice without a certificate issued by the Board of Medical Examiners. Section 18 of the Chiropractic Act provides that "[n]othing herein shall be construed as repealing the 'medical practice act' of June 2, 1913, or any subsequent amendments thereof, except insofar as that act or said amendments may conflict with the provisions of this act as applied

to persons licensed under this act, to which extent any and all acts or parts of acts in conflict are hereby repealed." The operative effect of the Chiropractic Act is to except from the Medical Practice Act those holding a license to practice chiropractic insofar as their conduct is authorized by such license under the provisions of the Chiropractic Act. (See *People* v. *Fowler, supra*, 32 Cal. App. 2d (Supp.) at p. 742; *People* v. *Mangiagli* (1950) 97 Cal. App. 2d (Supp.) 935, 938; *People* v. *Augusto, supra*, 193 Cal. App. 2d at p. 257; *Crees* v. *Board of Medical Examiners, supra*, 213 Cal. App. 2d at p. 209.) Amendment of the Medical Practice Act by the Legislature can have no effect as to chiropractors on matters authorized by their license to practice chiropractic because of the paramount authority of an initiative law which is not subject to amendment or repeal by the Legislature unless it so provides. (Art. II, § 10(c) of the Cal. Const.; *People* v. *Schuster* (1932) 122 Cal. App. (Supp.) 790, 793.) The Chiropractic Act has no such provision.

With respect to matters not authorized by the license to practice chiropractic, however, the Medical Practice Act is as applicable to chiropractors as it is to others. (See *People* v. *Machado* (1929) 99 Cal. App. 702, 706; *People* v. *Fowler, supra*, 32 Cal. App. 2d (Supp.) 737; *People* v. *Mangiagli, supra*, 97 Cal. App. 2d (Supp.) 935; *People* v. *Augusto, supra*, 193 Cal. App. 2d 253; *Crees* v. *Board of Medical Examiners, supra*, 213 Cal. App. 2d 195.)

Section 7 of the Chiropractic Act authorizes holders of the license issued thereunder to "practice chiropractic." "Chiropractic" is not defined in the act. We must therefore determine what "chiropractic" means as that word is used in section 7. In *Quail* v. *Industrial Accident Commission* (1934) 138 Cal. App. 412, 417 "chiropractic" is defined as a system of curing disease by means of adjusting the joints of the spine by hand, citing Webster's New International Dictionary. In *People* v. *Fowler, supra*, 32 Cal. App. 2d (Supp.) at pages 746-747 the court approved an instruction defining "chiropractic" as "A system of [or] the practice of adjusting the joints, especially of the spine, by hand for the curing of disease" taken from Webster's New Standard Dictionary. The *Fowler* opinion compared definitions from other dictionaries and from other cases and concluded:

> "This general consensus of definitions, current at and before the time the Chiropractic Act was adopted, shows what was meant by the term 'chiropractic' when used in that act. 'The words of a statute must be taken in the sense in which they were understood at the time when the statute was enacted.' . . . Words of common use, when found in a statute, are to be taken in their ordinary and general sense. (Citations)."

In *Jacobsen* v. *Board of Chiropractic Examiners* (1959) 169 Cal. App. 2d 389 the court approved board discipline of a chiropractor for violating the Chiropractic Act. At page 392 the court stated:

> "Webster's New International Dictionary defines 'chiropractic' as

'A system, or the practice, of adjusting the joints, esp. of the spine, by hand for the curing of disease.' The term itself is one of art, which makes use of 'chiro,' a Greek combining form meaning 'hand.' "

In *People* v. *Augusto, supra,* 193 Cal. App. 2d 253, 255 the court answered the contention that a licensed chiropractor who practices medicine may only be prosecuted under the Chiropractic Act and not under the Medical Practice Act as follows:

"The Chiropractic Act merely creates a limited exception to the provisions of Business and Professions Code section 2141 [in the Medical Practice Act]. While the possession of a chiropractor's license would be a full defense to a charge of violation of Section 2141 while the chiropractor was acting within the bounds and scope of his license, the term 'chiropractic' includes only the meaning of that term as it was generally understood in 1922 when the Chiropractic Act was adopted. Since the words of the statute must be understood according to the sense in which they were used at the time the statute was enacted, the meaning of the term is correctly stated to be: 'A system of therapeutic treatment for various diseases, through the adjusting of articulations of the human body, particularly those of the spine, with the object of relieving pressure or tension upon the nerve filaments. The operations are performed with the hands, no drugs being administered.' "

The Supreme Court denied a petition for hearing.

In *Crees* v. *Board of Medical Examiners, supra,* 213 Cal. App. 2d at pages 202 and 214 the court affirmed a declaratory judgment that stated with respect to the authorization to practice chiropractic under section 7 of the Chiropractic Act that:

"H. A duly licensed chiropractor may only practice or attempt to practice or hold himself out as practicing a system of treatment by manipulation of the joints of the human body by manipulation of anatomical displacements, articulation of the spinal column, including its vertebrae and cord, . . . "

The Supreme Court denied a petition for hearing.

In *People* v. *Mangiagli, supra,* 97 Cal. App. 2d (Supp.) at page 943 the court on rehearing of its affirmance of a conviction of a chiropractor for practicing medicine without a license considered the effect of a regulation of the Board of Chiropractic Examiners defining chiropractic thus:

"The basic principle of chiropractic is the maintenance of the structural and functional integrity of the nervous system. The practice of chiropractic consists of all necessary means to carry out these principles."

The court held this regulation was void stating:

> "The Chiropractic Act is not at all doubtful or ambiguous, as clearly appears from the authorities cited in the *Fowler* case (citation). There is, therefore, no room for administrative construction to affect or alter its meaning."

This ruling was approved in *Crees* v. *Board of Medical Examiners*, *supra*, 213 Cal. App. 2d at page 209.

Section 7's authorization of licensees to practice chiropractic is qualified by the words "as taught in chiropractic schools or colleges." The early cases held that these were words of definition, i.e., that chiropractic, as defined in section 7, was what was taught in chiropractic schools and colleges. In *People* v. *Schuster*, *supra*, 122 Cal. App. (Supp.) at pages 794-795 a licensed chiropractor was charged with violation of the Medical Practice Act by holding himself out as a doctor. The court reversed the conviction stating:

> ". . . he could establish a defense by showing that the treatments he offered to give were a part of the practice of chiropractic. The criterion established by the Chiropractic Act in this matter, except as to the use of medicine and other acts expressly excluded from the scope of chiropractic, is the teaching in chiropractic schools and colleges. (Sec. 7.) It was therefore error to reject defendant's offer to prove that the treatments offered by him were taught in chiropractic schools and colleges as a part of chiropractic."

In *Evans* v. *McGranaghan* (1935) 4 Cal. App. 2d 202 a chiropractor had contracted to provide certain treatments providing they were within the scope of the Chiropractic Act. The court stated:

> "As we construe section 7 of the Chiropractic Act it authorizes the license holder to practice chiropractic as taught in chiropractic schools or colleges, regardless of whether such practice would have been construed as the practice of medicine, surgery, osteopathy, dentistry or optometry prior to the enactment of the Chiropractic Act. It contains no definition of 'chiropractic as taught in chiropractic schools or colleges' and hence in the absence of evidence on that subject it is impossible of precise construction."

In *In re Hartman* (1935) 10 Cal. App. 2d 213, 217 the court rejected the defining role of the "as taught in chiropractic schools or colleges" language of section 7. The court stated:

> "While the section contains the additional clause 'as taught in chiropractic schools or colleges,' the entire section must be taken as a whole and it cannot be taken as authorizing a licensee to do anything

and everything that might be taught in such a school. A short course in surgery or one in law might be given incidentially, and it would not follow that the section would then authorize a licensed chiropractor to engage in such other professions. It is not sufficient that a particular practice is taught in such a school. Under the terms of the statute it must meet the further test that it is a part of chiropractic, whatever that philosophy or method may be, . . . "

In *People* v. *Fowler, supra*, 32 Cal. App. 2d (Supp.) at page 745 a chiropractor convicted of violating the Medical Practices Act claimed his license entitled him to practice "anything that he is taught in chiropractic schools and colleges" citing the *Evans* case. The court stated:

"This is too broad an interpretation of the provision. It contains two expressions, each of which has a limiting, as well as an authorizing, effect. The practice must be 'chiropractic,' and it must also be 'as taught in chiropractic schools or colleges.' Neither of these expressions can rule the meaning of the statute, to the exclusion of the other. . . .

"The effect of the words 'as taught in chiropractic schools or colleges' is not to set at large the signification of 'chiropractic,' leaving the schools and colleges to fix upon it any meaning they choose. Were the word 'chiropractic' of unknown, ambiguous or doubtful meaning, this clause, 'as taught' etc., might serve to provide a means of defining or fixing its signification, but there is here no such lack of clarity. The scope of chiropractic being well known, the schools and colleges, so far as the authorization of the chiropractor's license is concerned, must stay within its boundaries; they cannot exceed or enlarge them. The matter left to them is merely the ascertainment and selection of such among the possible modes of doing what is comprehended within that term as may seem to them best and most desirable, and so the fixing of the standards of action in that respect to be followed by chiropractic licensees. Such we understand to be the effect of the holding in *In re Hartman*, 10 Cal. App. (2d) 213, 217. *Evans* v. *McGranaghan, supra*, 4 Cal. App. (2d) 202, is not clearly to the contrary, but if it can be so regarded we prefer to follow the later Hartman case. If our opinion in *People* v. *Schuster*, 122 Cal. App. (Supp.) 790, 795, is thought to go farther than this, we now qualify it in that respect, deeming the rule just stated to be the proper one."

In *People* v. *Mangiagli, supra*, 97 Cal. App. 2d (Supp.) at page 939 the court quoted the foregoing language from its *Fowler* opinion and then added:

"In other words, the limits of permissible practice by the holder of a chiropractic license, as fixed by section 7 of the statute, do not extend, under the provision we have numbered (1) [to practice chiro-

> practic in the State of California as taught in chiropractic schools or colleges;], beyond the scope of chiropractic as that term was understood and defined in 1922, and the ambitious attempts of chiropractic schools or colleges to extend them by teaching other subjects under the guise of chiropractic must fail, so long as the statute remains as it is now."

In *Crees* v. *Board of Medical Examiners, supra,* 213 Cal. App. 2d 195 chiropractors sought declaratory relief contending that to establish what is chiropractic, it is necessary, inter alia, to take extrinsic evidence as to what is and has been taught in chiropractic educational institutions, and the practices that have developed in the profession. The court rejected this contention citing and quoting extensively from the *Fowler* case and added:

> "There is patently no merit in plaintiffs' claim that the practices that have developed in this profession are admissible in evidence to determine the acts and procedures they may properly perform under their chiropractic license."

A petition for hearing was denied by the Supreme Court.

These cases have settled the law insofar as the meaning of section 7's authorization "to practice chiropractic in the State of California as taught in chiropractic schools and colleges" is concerned. The definitions of "chiropractic" in these cases are consistent with one another and taken together define the scope of chiropractic as that term is used in section 7. Chiropractic is one system for the treatment of disease utilizing particular methods, namely the manual adjustment of the joints, especially those of the spine. The words "as taught in chiropractic schools and colleges" restrict rather than expand the authorization by requiring not only that a particular method or procedure be chiropractic but also that it be taught in chiropractic educational institutions. It is not a static system of healing but advances as new techniques in manipulation of the spine and other joints are developed and more is learned about the working and diseases of the human body. (See *Crees* v. *Board of Medical Examiners, supra,* 213 Cal. App. 2d at p. 202; 59 Ops. Cal. Atty. Gen. 201, 202.) Nevertheless chiropractic is but one of a number of systems of healing and is limited in scope by the methods by which it is defined.

Section 7 of the Chiropractic Act not only authorizes licensees to practice chiropractic but also "to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body."

In *People v. Fowler, supra,* 32 Cal. App. 2d (Supp.) at pages 745, 747-748 the court stated:

> "Section 7 is the only provision of the Chiropractic Act which undertakes either to define or describe chiropractic or to declare what

is authorized by a license issued under the act. The authorization is in two parts, 1st, 'to practice chiropractic . . . as taught in chiropractic schools or colleges,' and 2d, 'to use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body.'

"

"The second part of the authorization contained in the act, . . . , is not a definition of, but an addition to, chiropractic as used in the previous part of section 7 and authorizes chiropractors to use measures which would not otherwise be within the scope of their licenses."

In the prior case of *In re Hartman, supra*, 10 Cal. App. 2d 213 a chiropractor, convicted of violation of the Medical Practices Act by using a hypodermic syringe to inject an antitoxen in his patient, claimed that he was authorized to do so because it was merely a measure incident to the care of the body. The court rejected this claim stating at page 217:

"We think this cannot be held to be merely a measure incident to the care of the body within the meaning of the section both because that clause of the section refers to general hygienic and sanitary measures, even though mechanical, and not to the treatment of diseases and ailments, and because the section contains the further limitation that the authorization granted shall not extend to the practice of medicine or surgery."

In *People* v. *Nunn* (1944) 65 Cal. App. 2d 188, a licensed chiropractor was convicted of conspiracy to practice medicine without a license by administering drugs by means of hypodermic devices and performing surgical operations. In affirming the conviction the court noted that a chiropractor cannot legally practice surgery and added:

"He may not invade the field of medicine or surgery or administer drugs or medicines included within *materia medica*. He is limited to the use of mechanical hygienic measures incident to the care of the body which do not invade the field of medicine and surgery."

In *People* v. *Mangiagli, supra*, 97 Cal. App. 2d (Supp.) 935 a chiropractor treated a case of uterine bleeding by gauze packing, blood transfusion, hypodermic injection and giving the patient pills to take and was convicted of practicing medicine without a license. On appeal the court said:

"None of the acts of defendant above described come within the scope of chiropractic, as limited above and in the Fowler case, and hence they are not within the first authorization, as we have above numbered the two authorizing clauses of Section 7. . . . Perhaps the packing of the uterus might be classed as one of the described measures incident to the care of the body listed in the second authorization. Of this we have some

> doubt, in view of the purpose for which it was done, which hardly suggests it was 'incident to the care of the body.' But however that may be, it is clear that the other acts done, the administration of blood plasma and the hypodermic injection, when done for the treatment of ailment, disease, or other physical condition, are not such mechanical, hygienic or sanitary measures incident to the care of the body, as may be used by chiropractic licensees."

In *Crees* v. *Board of Medical Examiners, supra,* 213 Cal. App. 2d at page 202 the trial court issued a declaratory judgment that "Licensed chiropractors are not authorized by their license to practice obstetrics or to sever the umbilical cord in any childbirth or to perform episiotomy." Plaintiffs urged on appeal that these measures were authorized under the language in section 7 which authorizes a chiropractor to "use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body. . . ." The court stated (at p. 212) ". . . this language does not authorize either the use of drugs, medicines, the severance of tissues, or the practice of obstetrics." The court cited the above quoted language from the *Hartman* and *Nunn* cases with approval and held (at p. 213):

> "From the foregoing it is apparent that the provision of section 7 of the Chiropractic Act authorizing a chiropractor to use mechanical, hygienic, and sanitary measures incident to the care of the body does not authorize him to practice obstetrics, sever the umbilical cord, or perform an episiotomy for this would be invading the field of medicine and surgery and this he may not do under the express provisions of the act."

With this review of the Chiropractic Act and the cases construing it we are prepared to respond to the question presented, whether providing assistance in the birth of a child by natural childbirthing methods for a fee is authorized by the license to practice chiropractic. We conclude that the license to practice chiropractic does not authorize such acts for the following reasons:

1. Assisting in the birth of a child by natural childbirthing methods is not included in the practice of chiropractic within the meaning of section 7 of the Chiropractic Act as it has been construed by the appellate courts in California.

2. The authorization to "use all necessary mechanical, and hygienic and sanitary measures incident to the care of the body" accorded chiropractic licensees by section 7 of the Chiropractic Act does not include providing assistance in the birth of a child.

3. Providing assistance in the birth of a child by natural childbirthing methods for a fee is the practice of obstetrics which is not authorized by the license to practice chiropractic issued under the Chiropractic Act as indicated by the argument to the voters in favor of that act, the express language relating to the practice of medicine in section 7 of that act and the appellate court decisions which have construed that act.